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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,583	07/07/2003	Kevin L. Parsons	89535	7657
24628	7590	08/24/2004	EXAMINER	
WELSH & KATZ, LTD 120 S RIVERSIDE PLAZA 22ND FLOOR CHICAGO, IL 60606				WARD, JOHN A
			ART UNIT	PAPER NUMBER
			2875	

DATE MAILED: 08/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/614,583	PARSONS, KEVIN L.	
	<b>Examiner</b>	<b>Art Unit</b>	
	John A. Ward	2875	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 07 July 2003.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 48-77 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 48-55,60-67 and 72-77 is/are rejected.  
 7) Claim(s) 56-59 and 68-71 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____ .  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>0803</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Claim Objections***

Claims 60 and 61 are objected to because of the following informalities: the term "the light source" lacks antecedent basis. Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 48-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huang (US 5,730,013) in view of Nicholson (US 5,819,917).

Regarding claim 48, Huang discloses a flashlight comprising of a light emitting diode 5 having a first and second lead extending therefrom (figure 2), a power source 4, housing having at least one side 1, and a switch 21 operable to close a circuit including the light emitting diode and battery (figure 3).

Regarding claims 49 and 50, Huang discloses a pair of opposing sides 1, 2 further comprising a generally flat shape (figure 3) and adjacent to the battery 4.

Regarding claims 48 and 51, Huang does not disclose the sides of the housing having a plurality of colors.

Regarding claims 48 and 51, Nicholson ('917) discloses a flashlight comprising of a lamp (L), battery (B), housing having a first and second part (12, 20), column 3, lines 24-27, teaches that the housings can be in a variety of colors.

Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the flashlight of Huang with the flashlight of Nicholson in order to provide a flashlight that is easy to carry, colorful and can be attached to other accessories as taught by Nicholson (abstract).

Claims 60-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huang in view of Nicholson

Regarding claim 60, Huang discloses a flashlight comprising of a light emitting diode 5, a power source 4, a side covers 1,2, a switch 21 located adjacent to the power source operable to close a circuit including the light source and the power source (figure 3).

Regarding claim 61, Huang discloses in figures 2 and 3 a pair of side covers 1, 2 disposed on opposing sides of the power source frame that together enclose at least a portion of the light emitting diode 5.

Regarding claim 62, Huang discloses in figure 2 and 3 that the housing side covers 1, 2 having a generally flatten shape.

Regarding claim 60 and 63, Huang does not discloses the covers having a plurality of colors.

Regarding claims 60 and 63, Nicholson ('917) discloses a flashlight comprising of a lamp (L), battery (B), housing having a first and second part (12, 20), column 3, lines 24-27, teaches that the housings can be in a variety of colors.

Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the flashlight of Huang with the flashlight of Nicholson in order to provide a flashlight that is easy to carry, colorful and can be attached to other accessories as taught by Nicholson (abstract).

Claims 72 is rejected under 35 U.S.C. 103(a) as being unpatentable over Huang in view of Nicholson.

Regarding claim 72, Huang discloses a flashlight comprising of a light emitting diode 5 having a first and second lead extending therefrom, a disk shaped power source 4 having a first and second side, a housing 1,2 enclosing the leads of the light emitting diode and the power source, a switch 21 located adjacent the power source and operable to close a circuit including the light emitting diode and the power source (figure 3).

The housing 1,2 are a pair of generally flat side covers disposed on opposing sides of the flashlight in a mutually parallel relationship with each other and with a first and second sides of the power source (figure 1).

Regarding claim 72, Huang does not disclose the housing having plurality of colors disposed adjacent an outer surface of the side cover.

Regarding claim 72, Nicholson ('917) discloses a flashlight comprising of a lamp (L), battery (B), housing having a first and second part (12, 20), column 3, lines 24-27, teaches that the housings can be in a variety of colors.

Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the flashlight of Huang with the flashlight of Nicholson in order to provide a flashlight that is easy to carry, colorful and can be attached to other accessories as taught by Nicholson (abstract).

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 48-55 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 5 and 9-11 of U.S. Patent No. 6,357,890 in view of Nicholson (US 5,819,917). Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following reasons: Claim 48 similar in scope of claim 1 of the prior art of ('890).

Claim 49 and 50 similar in scope of claim 5 of the prior art of ('890) and claims 53, 54, and 55 are similar in scope to claims 9, 10 and 11 of ('890) respectively.

Regarding claims 51 and 52, the prior art of ('890) does not teach or suggest the sides having a plurality of colors.

Regarding claims 48, 51 and 52, Nicholson ('917) discloses a flashlight comprising of a lamp (L), battery (B), housing having a first and second part (12, 20), column 3, lines 24-27, teaches that the housings can be in a variety of colors.

Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the flashlight of Huang with the flashlight of Nicholson in order to provide a flashlight that is easy to carry, colorful and can be attached to other accessories as taught by Nicholson (abstract).

Claims 60-67 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1, 5 and 9-11 of U.S. Patent No. 6,357,890 in view of Nicholson. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following reasons:

Claims 60 of the instant application is similar in scope to that of claim 1 of the ('890) reference, claims 61 and 62 are similar in scope to that of claim 5 of the ('890) reference, and claims 65, 66 and 67 are similar in scope to that of claims 9, 10 and 11 respectively.

Regarding claims 60, 63 and 64, the prior art of ('890) does not teach or suggest the sides having a plurality of colors.

Regarding claims 60, 63 and 64, Nicholson ('917) discloses a flashlight comprising of a lamp (L), battery (B), housing having a first and second part (12, 20), column 3, lines 24-27, teaches that the housings can be in a variety of colors.

Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the flashlight of Huang with the flashlight of Nicholson in order to provide a flashlight that is easy to carry, colorful and can be attached to other accessories as taught by Nicholson (abstract).

Claim 72 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,357,890 in view of Nicholson.

Regarding claim 72 of the instant application, all the limitations are similar in scope to that of claim 1 of ('890) reference however, the prior art does not disclose in the claim the sides of housing having a plurality of colors.

Regarding claim 72, Nicholson ('917) discloses a flashlight comprising of a lamp (L), battery (B), housing having a first and second part (12, 20), column 3, lines 24-27, teaches that the housings can be in a variety of colors.

Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the flashlight of Huang with the flashlight of Nicholson in order to provide a flashlight that is easy to carry, colorful and can be attached to other accessories as taught by Nicholson (abstract).

Claims 73-77 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 5 of U.S. Patent No. 6,357,890 in view of Nicholson. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the follow reasons:

Claims 73 is similar in scope of claim 1 of the ('890) reference, claims 74 and 75 are similar in scope of claim 5 of the ('890) reference.

Regarding claims 76 and 77, the prior art of ('890) does not teach or suggest the sides having a plurality of colors.

Regarding claims 76 and 77, Nicholson ('917) discloses a flashlight comprising of a lamp (L), battery (B), housing having a first and second part (12, 20), column 3, lines 24-27, teaches that the housings can be in a variety of colors.

Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the flashlight of Huang with the flashlight of Nicholson in order to provide a flashlight that is easy to carry, colorful and can be attached to other accessories as taught by Nicholson (abstract).

#### ***Allowable Subject Matter***

Claims 56-59 and 68-71 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John A. Ward whose telephone number is 571-272-2386. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on 571-272-2378. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JAW  
August 20, 2004

AU 2875



JOHN ANTHONY WARD  
PRIMARY EXAMINER